

Sub-Buch

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UNITED STATES TAX COURT

WASHINGTON, DC 20217

RONALD E. BYERS,	)	
	)	
Petitioner,	)	
	)	
v.	)	Docket No. 4201-12L.
	)	
COMMISSIONER OF INTERNAL REVENUE,	)	
	)	
Respondent	)	

O R D E R

Pursuant to Rule 152(b), Tax Court Rules of Practice and Procedure, it is

ORDERED that the Clerk of the Court shall transmit with this order to both petitioner and respondent a copy of the pages of the transcript of the trial in this case that contain the oral findings of fact and opinion that was rendered at the trial session at St. Paul, Minnesota.

In accordance with the oral findings of fact and opinion, decision will be entered for petitioner.

(Signed) Ronald L. Buch  
Judge

Dated: Washington, D.C.  
May 17, 2013

**SERVED MAY 20 2013**

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1 Bench Opinion by Judge Ronald L. Buch  
2 April 25, 2013  
3 Ronald E. Byers v. Commissioner  
4 Docket No. 4201-12L

5 THE COURT: The Court has decided to render  
6 oral findings of fact and opinion in this case, and  
7 the following represents the court's oral findings of  
8 fact and opinion . The oral findings of fact and  
9 opinion may not be relied upon as precedent in any  
10 other case. This opinion is in conformity with  
11 internal revenue code section 7459(b) and rule 152(a)  
12 of the Tax- Court Rules of Practice and Procedure.  
13 Any section references that follow refer to the  
14 internal revenue code in effect during the years at  
15 issue, and rule references are to the Tax Court Rules  
16 of Practice and Procedure.

17 Pursuant to section 6330(d), Mr. Byers  
18 seeks review of respondent's determination to sustain  
19 the filing of a Notice of Federal Tax Lien. The  
20 issue for decision is whether the appeals officer  
21 abused her discretion in rejecting Mr. Byers's  
22 requests to withdraw the lien and failing to address  
23 other proposed collection alternatives.

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25 Background

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1           Petitioner did not file Federal income tax  
2     returns for 1999, 2000, 2001, 2002, or 2003. On March  
3     22, 2005, respondent issued to petitioner a Notice of  
4     Deficiency determining a deficiency and additions to  
5     tax for the taxable years 1999, 2000, 2001, and 2002.  
6     In Byers v. Commissioner, T.C. Memo. 2007-331, the  
7     Court sustained the Notice of Deficiency and found  
8     petitioner liable for the deficiencies and additions  
9     to tax. On November 13, 2007, the Court issued a  
10    decision against Mr. Byers , consistent with the  
11    opinion. On May 12, 2008, respondent assessed the  
12    tax, additions to tax, and interest for 1999, 2000,  
13    2001, and 2002.

14           On March 28, 2011, respondent issued  
15    to Mr. Byers a Notice of Deficiency determining a  
16    deficiency and additions to tax for the taxable year  
17    2003. Mr. Byers timely filed a petition disputing  
18    the Notice of Deficiency, as the envelope containing  
19    his petition bore a postmark date of June 25, 2011,  
20    although it was not received and filed by the Court  
21    until July 5, 2011. On August 22, 2011, respondent  
22    assessed the tax and additions to tax against Mr.  
23    Byers for 2003. That case was set for trial at the  
24    Court's April 22, 2013 St. Paul, Minnesota trial  
25    session, and it has been heard and decided.

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1           On March 16, 2010, respondent issued to Mr.  
2 Byers a Letter 3172, Notice of Federal Tax Lien  
3 Filing and Your Right to Hearing. Mr. Byers timely  
4 submitted a Form 12153, Request for a Collection Due  
5 Process or Equivalent Hearing. The hearing was held  
6 by correspondence between August and October 2011.

7           In his correspondence, Mr. Byers raised several  
8 requests regarding the lean. Major headings in his  
9 August 23, 2011 letter include Discharge of Lien,  
10 Subordination of Lien, and Withdrawal of Notice of  
11 Federal Tax Lien. Mr. Byers also raised the issue of  
12 the 2003 assessment, which should have been  
13 recognized by all involved as invalid. In its  
14 October 12, 2011 response, the IRS advised Mr. Byers  
15 that the initial 2003 assessment had been eliminated,  
16 but that a new 2003 assessment had posted. This is  
17 puzzling, given that even today, the restrictions on  
18 assessment for the 2003 tax year remain in place.  
19 See I.R.C. sec. 6213(a). Mr. Byers noted this point  
20 in his responding letter of October 22, 2011. In  
21 that letter, Mr. Byers again raised the issue of lien  
22 subordination, noting that the IRS failed to address  
23 it. Indeed, the IRS never did address it.

24           On December 2, 2011, respondent issued to  
25 Mr. Byers a Notice of Determination sustaining the

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1 filing of the Notice of Federal Tax Lien for 1999,  
2 2000, 2001, 2002, and 2003. With respect to 2003,  
3 respondent stated in the Notice of Determination:

4 "As mentioned to you, in the letter dated August  
5 11, 2011, the initial assessment for tax period  
6 2003 was eliminated. You were also informed  
7 that there was an additional pending assessment  
8 for this tax period. The assessment has now  
9 posted. You now have a balance due for the 2003  
10 tax period. Although the Notice of Federal Tax  
11 Lien cannot be discharged because the assessment  
12 is valid, Appeals considered whether any of the  
13 criteria for allowing withdrawal of the lien  
14 existed in your case... There is nothing in the  
15 Collection administrative file that indicates  
16 withdrawal of the filed lien should be  
17 considered and you have provided no additional  
18 information that indicates the withdrawal of the  
19 filed lien should be considered."

20 Petitioner timely filed a petition  
21 disputing the Notice of Determination. On March 7,  
22 2010, respondent filed a motion to remand. In the  
23 motion to remand, respondent admits that the tax lien  
24 for the year 2003 is based on an erroneous assessment  
25 that has now been abated. Respondent also asserted

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1 that the appeals officer erred in failing to grant  
2 withdrawal of the federal tax lien for the year 2003  
3 and in failing to address all of the collection  
4 alternatives raised by petitioner.

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6 Discussion

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8 Section 6321 provides that, if any person  
9 liable to pay any tax neglects or refuses to do so  
10 after demand, the amount shall be a lien in favor of  
11 the United States upon all property and rights to  
12 property, whether real or personal, belonging to such  
13 person. Section 6323 authorizes the Commissioner to  
14 file a Notice of Federal Tax Lien. Pursuant to  
15 section 6320(a) the Commissioner must provide the  
16 taxpayer with notice of and an opportunity for an  
17 administrative review of the propriety of the NFTL  
18 filing. See Katz v. Commissioner, 115 T.C. 329, 333  
19 (2000).

20 Where the underlying tax liability is  
21 properly at issue, we review the Commissioner's  
22 determination de novo; where the validity of the  
23 underlying tax liability is not properly at issue, we  
24 review the Commissioner's administrative  
25 determination for abuse of discretion. Sego v.

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1 Commissioner, 114 T.C. 604, 610 (2000); Goza v.  
2 Commissioner, 114 T.C. 176, 181-182 (2000). Taxpayers  
3 may prove abuse of discretion by showing that the  
4 Commissioner exercised his discretion arbitrarily,  
5 capriciously, or without sound basis in fact or law.  
6 See Giamelli v. Commissioner, 129 T.C. 107, 111  
7 (2007).

8           The Court can remand a case to the appeals  
9 office to clarify and supplement the administrative  
10 record as appropriate. See Wadleigh v. Commissioner,  
11 134 T.C. 280, 299 (2010). However, the record is  
12 clear that respondent erroneously assessed amounts  
13 against petitioner for 2003 and we accept  
14 respondent's own assertion that the appeals officer  
15 did not address all of petitioner's requested  
16 collection alternatives. Thus, a remand is not  
17 needed to clarify or supplement the record in this  
18 case.

19           Respondent's assertion in closing argument  
20 that not every tiny issue need be addressed is not  
21 well taken. First, collection alternatives, to the  
22 person who could be subjected to forced collection  
23 activity, are not tiny issues. But moreover, lien  
24 subordination was a major heading in two separate  
25 letters from Mr. Byers and was never addressed.

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1 Conclusion

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3           The Court concludes that the appeals  
4 officer abused her discretion in sustaining the  
5 Notice of Federal Tax Lien and failing to withdraw  
6 the lien for 2003 that was based on an erroneous  
7 assessment. The Court also concludes that it was  
8 arbitrary and capricious to fail to address all of  
9 petitioner's proposed collection alternatives. To  
10 reflect the foregoing, decision will be entered for  
11 petitioner.

12           (Whereupon, at 9:47 a.m., the above-  
13 entitled matter was concluded.)

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